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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/542,086	07/13/2005	Yoichiro Sako	268558US6PCT	6734
22850	7590	06/03/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER TOOTH, KAREN E	
			ART UNIT 3735	PAPER NUMBER
			NOTIFICATION DATE 06/03/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/542,086

Applicant(s)

SAKO ET AL.

Examiner

KAREN E. TOTH

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/55/08)
Paper No(s)/Mail Date 11/26/07; 7/13/05
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Information Disclosure Statement

1. Certain references were marked as not considered because they were not provided in English.

Claim Objections

2. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.
3. Regarding claims 1-20, the word "means" is preceded by the word(s) "detecting", "instructing", "reproducing", etc., in an attempt to use a "means" clause to recite a claim element as a means for performing a specified function. However, since no function is specified by the word(s) preceding "means," it is impossible to determine the equivalents of the element, as required by 35 U.S.C. 112, sixth paragraph. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
5. Claim 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claim provides limitations for an instructing means, which

is not present in the parent claim. It appears that this was inadvertently copied from claim 4.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-25 are rejected under 35 U.S.C. 102(e) as being anticipated by Gavish (US 2004/0116784).

Regarding claim 1, Gavish discloses a data reproduction instructing apparatus comprising means for reproducing data, means for detecting organic information, and means for instructing timing to start the reproduction of the data based upon the detected organic information (paragraphs [0031], [0033]; elements 36, 32, 30).

Regarding claim 2, Gavish further discloses the data being audio or video data (paragraph [0033]).

Regarding claim 3, Gavish further discloses the organic information showing body motion, breathing, heartbeats, or respiration (paragraphs [0033], [0041], [0047]).

Regarding claim 4, Gavish further discloses the instructing means being an audio sound, buzzer, light-emitting device, or display (paragraphs [0031], [0033]).

Regarding claim 5, Gavish further discloses detecting the point between inspiratory and expiratory periods of respiration, and instructing the timing to start the data reproduction when the point is detected (paragraphs [0047], [0077]-[0079], [0104]).

Regarding claim 6, Gavish further discloses detecting a pulsation (paragraphs [0080], [0119]-[0121]) and instructing the timing of the data reproduction to start based upon the detected pulsation (paragraphs [0074]).

Regarding claim 7, Gavish discloses a data reproducing apparatus comprising means for reproducing data (paragraph [0075]), means for detecting organic information (paragraphs [0031], [0033]), and means for controlling timing to start the reproduction of the data based upon the detected organic information (element 30).

Regarding claim 8, Gavish further discloses the data being audio or video data (paragraph [0033], [0160]).

Regarding claim 9, Gavish further discloses the organic information being representative of body motion, breathing, heartbeats, or pulsation (paragraphs [0033], [0041], [0047], [0164]-[0167]).

Regarding claim 10, Gavish further discloses the apparatus having a display (paragraphs [0162]-[0163]).

Regarding claim 11, Gavish further discloses the reproduced data being constructed from a plurality of partial data, and the timing for the partial data is started based upon the detected information (paragraph [0187]).

Regarding claim 12, Gavish further discloses the data reproduction being started when a particular feature is noted in the detected information (paragraph [0187]).

Regarding claim 13, Gavish further discloses detecting the point between inspiratory and expiratory periods of respiration, and instructing the timing to start the data reproduction when the point is detected (paragraphs [0047], [0077]-[0079], [0104]).

Regarding claim 14, Gavish further discloses detecting a pulsation (paragraphs [0080], [0119]-[0121], [0193], [0202]-[0203]) and instructing the timing of the data reproduction to start based upon the detected pulsation's maximum (paragraphs [0074], [0190]).

Regarding claim 15, Gavish further discloses means for storing a plurality of organic information (elements 40, 41) and the data reproduction being based upon organic information selected from the plurality of stored organic information (paragraphs [0170]-[0179]).

Regarding claim 16, Gavish discloses a data transmission instructing apparatus comprising means for transmitting data, means for detecting organic information, and means for instructing timing to start the transmission of the data based upon the detected organic information (paragraphs [0031], [0033]; elements 30, 32, 36).

Regarding claim 17, Gavish discloses a data transmission apparatus comprising means for transmitting data (paragraph [0075]), means for detecting organic information (paragraphs [0031], [0033]), and means for controlling timing to start the transmission of the data based upon the detected organic information (element 30).

Regarding claim 18, Gavish discloses a data recording apparatus comprising means for recording data, means for detecting organic information, and means for instructing timing to start the recording of the data based upon the detected organic information (paragraphs [0062]-[0064]; element 41).

Regarding claims 19 and 20, Gavish discloses a data recording apparatus comprising means for recording data onto recording media, means for detecting organic information (paragraphs [0031], [0033]), and means for controlling timing to start the recording of the data based upon the detected organic information (paragraphs [0062]-[0064]; element 41).

Regarding claim 21, Gavish discloses a method comprising detecting organic information during data reproduction and instructing timing to reproduce the data based upon the detected organic information (paragraphs [0031], [0033], [0164]).

Regarding claim 22, Gavish discloses a method comprising detecting organic information during data reproduction, and controlling the timing of reproduction to reproduce the data based upon the detected organic information (paragraphs [0031], [0033], [0164]).

Regarding claim 23, Gavish discloses detecting organic information (paragraphs [0031], [0161]) and instructing timing to record data based upon the detected organic information (paragraphs [0062]-[0064], [0164]-[0167]).

Regarding claims 24 and 25, Gavish discloses detecting organic information (paragraphs [0031], [0161]), instructing timing to record data based upon the detected

organic information, and recording the data and the organic information onto a recording medium (paragraphs [0062]-[0064], [0164]-[0167]).

8. Claims 1-17, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Gavish'281 (US 5076281).

Gavish'281 discloses reproducing and transmitting data comprising means for detecting organic information and means for controlling the transmission and reproduction of data based upon the organic information, where the data includes audio data, the organic information includes breathing, detecting inspiratory/expiratory periods, and storing data (column 2, lines 3-40; column 3, lines 10-56; column 4, lines 39-51; column 5, lines 26-55).

9. Claims 1-4, 7-10, 16, 17, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Mault (US 2001/0044588).

Mault discloses reproducing and transmitting data with timing based upon detected organic information, where the information includes breathing and heartbeats, and the data includes audio and visual data (paragraphs [0006]-[0008], [0012], [0039], [0043], [0057], [0066], [0069]).

10. Claims 1-4, 7-10, 16, 17, 21, and 22 are rejected under 35 U.S.C. 102(b) as being anticipated by Tacklind (US 5626144).

Tacklind discloses reproducing and transmitting data with timing based upon detected organic information, where the information includes breathing and heartbeats, and the data includes audio and visual data (column 4, lines 2-26 and 48-53; column 5, lines 29-38 and 55-65; column 7, lines 46-59; column 8, lines 36-63).

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

US 2005/0096555 to Elliott, 6018118 to Smith, 2004/0225340 to Evans, 2006/0169125 to Ashkenazi, 2005/0131308 to Chio, 4216462 to McGrath, 6212135 to Schreiber, 4883067 to Knispel, 4195626 to Schweizer, which disclose similar inventions.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAREN E. TOTH whose telephone number is (571)272-6824. The examiner can normally be reached on Mon thru Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor II can be reached on 571-272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Patricia C. Mallari/
Primary Examiner, Art Unit 3735

/K. E. T./
Examiner, Art Unit 3735